

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 ROBERT H. SMITH, *et al.*,

9 Plaintiffs,

10 v.

11 RYAN W. PHILLIPS, *et al.*,

12 Defendants.

Case No. C17-1457-RSL-MAT

ORDER DENYING PLAINTIFF
SMITH'S MOTION FOR SEPARATE
REPRESENTATION

13
14 This is a civil rights action brought under 42 U.S.C. § 1983. This matter comes before the
15 Court at the present time on plaintiff Smith's motion for separate representation, and on plaintiff
16 Smith's motions to modify the pretrial scheduling order and to amend his complaint. The Court,
17 having considered the pending motions, and the balance of the record, hereby finds and ORDERS
18 as follows:

19 (1) Plaintiff Smith's motion for separate representation (Dkt. 45) is DENIED. Though
20 plaintiff's motion is not entirely clear, it appears that Mr. Smith is asking to have his portion of
21 this action separated from that of his co-plaintiff James Phillips. In support of this request, Mr.
22 Smith cites to the difficulties in obtaining Mr. Phillips' signature so that all documents filed with
23 the Court and served on defendants are properly executed. Mr. Smith also complains that he should

ORDER DENYING PLAINTIFF SMITH'S MOTION
FOR SEPARATE REPRESENTATION - 1

1 not have to “take on” Mr. Phillips’ legal matters.

2 When Mr. Smith originally filed this action in September 2017, he was the only named
3 plaintiff. (Dkt. 1.) When Mr. Smith subsequently submitted his first amended complaint to the
4 Court for review, he had added Mr. Phillips as a co-plaintiff even though he did not assert any
5 claims in that pleading on behalf of Mr. Phillips. (See Dkt. 7.) Mr. Smith was thereafter advised
6 that if Mr. Phillips wished to join this action, Mr. Phillips would have to submit an application to
7 proceed *in forma pauperis* to indicate that intent and Mr. Phillips would also have to assert some
8 viable cause of action against one or more of the named defendants. (See Dkt 9 at 2 n.1.)

9 Mr. Smith and Mr. Phillips thereafter submitted a second amended complaint to the Court,
10 one bearing both of their signatures, and a motion to add Mr. Phillips as a plaintiff. (Dkts. 11, 12.)
11 Mr. Phillips also submitted an application to proceed *in forma pauperis*. (Dkt. 12-1.) Mr. Phillips’
12 application to proceed *in forma pauperis* was granted, and the second amended complaint was
13 subsequently served on some, but not all, of the defendants identified therein. (See Dkts. 16, 17,
14 21 and 22.) Defendants filed answers to the second amended complaint, and a pretrial scheduling
15 order was entered. (See Dkts. 35, 43, 44.) Shortly thereafter, Mr. Smith filed the instant motion
16 to proceed separately. (Dkt. 45.)

17 It appears from the record that Mr. Smith has at all times been the primary plaintiff in this
18 action, and that Mr. Phillips has not participated in this action in any appreciable way since May
19 2018. (See Dkts. 31, 34.) However, Mr. Smith voluntarily invited Mr. Phillips into this action
20 and, though Mr. Smith is now apparently feeling constrained by some of the requirements
21 associated with litigating this action with a co-plaintiff, Mr. Phillips will remain a plaintiff until he
22 either asks to be dismissed from this action or defendants successfully move for his dismissal.

23 (2) Plaintiff Smith’s motions to modify the pretrial scheduling order and to amend his

1 complaint (Dkts. 47, 51) are STRICKEN. The instant motions were signed only by Mr. Smith.
2 While the Court understands that Mr. Smith has had difficulties obtaining Mr. Phillips' signature,
3 Mr. Phillips remains a plaintiff in this action and is therefore required to sign every written motion.
4 See Fed. R. Civ. P. 11(a). Because the motions were not signed by Mr. Phillips, the motions are
5 procedurally defective and are not properly before the Court.

6 While the Court declines to formally entertain plaintiff Smith's motion for modification of
7 the pretrial scheduling order, the Court deems it appropriate, under the circumstances, to make
8 slight modifications to the pretrial schedule to permit plaintiffs to file a proper motion for extension
9 of time or to otherwise determine how they would like to proceed in this matter. Accordingly, the
10 discovery deadline is extended to ***November 19, 2018***, and the dispositive motion filing deadline
11 is extended to ***December 19, 2018***.

12 (3) The Clerk is directed to send copies of this Order to plaintiffs, to counsel for
13 defendants, and to the Honorable Robert S. Lasnik.

14 DATED this 17th day of October, 2018.

15
16 

17 Mary Alice Theiler
18 United States Magistrate Judge
19
20
21
22
23